

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 161

Introduced by Senator Vidak

February 3, 2015

An act to amend Sections 3439, 3439.01, 3439.02, 3439.04, 3439.05, 3439.06, 3439.07, 3439.08, 3439.09, 3446, and 3447 of, to amend the heading of Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of, to amend the heading of Chapter 3 (commencing with Section 3445) of Title 2 of Part 2 of Division 4 of, to amend the heading of Title 2 (commencing with Section 3439) of Part 2 of Division 4 of, to amend and renumber ~~Section Sections 3439.11 and 3439.12~~ of, and to amend, renumber, and add ~~Sections Section 3439.10 and 3439.11~~ of, the Civil Code, to amend Sections 5420, 7420, 15905.02, 15911.27, 17704.03, 17711.08, and 18640 of the Corporations Code, to amend Sections 283 and 9653 of the Probate Code, and to amend Section 2104 of the Public Utilities Code, relating to civil law.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, as amended, Vidak. Uniform Fraudulent Transfer Act.

The Uniform Fraudulent Transfer Act, based in part on the model Uniform Fraudulent Transfer Act, generally establishes the conditions under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, and sets forth the remedies of a creditor with respect to a fraudulent transfer or obligation, including, but not limited to, voiding the transfer. The act defines terms for its purposes.

This bill would rename the act the Uniform Voidable Transactions Act and would revise the act to adopt certain provisions proposed by the 2014 Uniform Voidable Transactions Act, which is based upon the Uniform Fraudulent Transfer Act, both of which were promulgated by

the Uniform Law Commission. This bill would specify the burden of proof in making and defending a claim for relief and the basis for determining the governing law for a claim for relief under the act. This bill would modify definitions applicable to the act, would remove a definition of insolvency relating to a partnership debtor, and would add new definitions, including, but not limited to, definitions of “record” and “sign.” This bill would replace the term “fraudulent” with the term “voidable,” as specified. ~~This bill would provide that each “protected series” of a “series organization,” as those terms are defined, is treated as a person for purposes of the act.~~ This bill would limit the applicability of the modifications to the act proposed by this bill to a right of action that accrued, transfer made, or obligation incurred on or after the effective date of this bill.

This bill would revise cross-references to the act and would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Title 2 (commencing with Section
2 3439) of Part 2 of Division 4 of the Civil Code is amended to read:

3
4 TITLE 2. VOID AND VOIDABLE TRANSFERS AND
5 UNDERTAKINGS
6

7 SEC. 2. The heading of Chapter 1 (commencing with Section
8 3439) of Title 2 of Part 2 of Division 4 of the Civil Code is
9 amended to read:

10
11 CHAPTER 1. UNIFORM VOIDABLE TRANSACTIONS ACT
12

13 SEC. 3. Section 3439 of the Civil Code is amended to read:
14 3439. This chapter may be cited as the Uniform Voidable
15 Transactions Act.

16 SEC. 4. Section 3439.01 of the Civil Code is amended to read:
17 3439.01. As used in this chapter the following definitions are
18 applicable:

19 (a) “Asset” means property of a debtor, but the term does not
20 include the following:

1 (1) Property to the extent it is encumbered by a valid lien.

2 (2) Property to the extent it is generally exempt under
3 nonbankruptcy law.

4 (3) An interest in property held in tenancy by the entirety to
5 the extent it is not subject to process by a creditor holding a claim
6 against only one tenant.

7 (b) “Claim,” except as used in “claim for relief,” means a right
8 to payment, whether or not the right is reduced to judgment,
9 liquidated, unliquidated, fixed, contingent, matured, unmatured,
10 disputed, undisputed, legal, equitable, secured, or unsecured.

11 (c) “Creditor” means a person that has a claim, and includes an
12 assignee of a general assignment for the benefit of creditors, as
13 defined in Section 493.010 of the Code of Civil Procedure, of a
14 debtor.

15 (d) “Debt” means liability on a claim.

16 (e) “Debtor” means a person that is liable on a claim.

17 (f) “Electronic” means relating to technology having electrical,
18 digital, magnetic, wireless, optical, electromagnetic, or similar
19 capabilities.

20 (g) “Lien” means a charge against or an interest in property to
21 secure payment of a debt or performance of an obligation, and
22 includes a security interest created by agreement, a judicial lien
23 obtained by legal or equitable process or proceedings, a
24 common-law lien, or a statutory lien.

25 (h) “Organization” means a person other than an individual.

26 (i) “Person” means an individual, partnership, corporation,
27 limited liability company, association, government or governmental
28 subdivision, instrumentality or agency, business trust, estate, trust,
29 business or nonprofit entity, or other legal entity.

30 (j) “Property” means anything that may be the subject of
31 ownership.

32 (k) “Record” means information that is inscribed on a tangible
33 medium or that is stored in an electronic or other medium and is
34 retrievable in perceivable form.

35 (l) “Sign” means, with present intent to authenticate or adopt a
36 record, to either (1) execute or adopt a tangible symbol, or (2)
37 attach to or logically associate with the record an electronic symbol,
38 sound, or process.

39 (m) “Transfer” means every mode, direct or indirect, absolute
40 or conditional, voluntary or involuntary, of disposing of or parting

1 with an asset or an interest in an asset, and includes payment of
2 money, release, lease, license, and creation of a lien or other
3 encumbrance.

4 (n) “Valid lien” means a lien that is effective against the holder
5 of a judicial lien subsequently obtained by legal or equitable
6 process or proceedings.

7 SEC. 5. Section 3439.02 of the Civil Code is amended to read:

8 3439.02. (a) A debtor is insolvent if, at a fair valuation, the
9 sum of the debtor’s debts is greater than the sum of the debtor’s
10 assets.

11 (b) A debtor that is generally not paying the debtor’s debts as
12 they become due other than as a result of a bona fide dispute is
13 presumed to be insolvent. The presumption imposes on the party
14 against which the presumption is directed the burden of proving
15 that the nonexistence of insolvency is more probable than its
16 existence.

17 (c) Assets under this section do not include property that has
18 been transferred, concealed, or removed with intent to hinder,
19 delay, or defraud creditors or that has been transferred in a manner
20 making the transfer voidable under this chapter.

21 (d) Debts under this section do not include an obligation to the
22 extent it is secured by a valid lien on property of the debtor not
23 included as an asset.

24 SEC. 6. Section 3439.04 of the Civil Code is amended to read:

25 3439.04. (a) A transfer made or obligation incurred by a debtor
26 is voidable as to a creditor, whether the creditor’s claim arose
27 before or after the transfer was made or the obligation was incurred,
28 if the debtor made the transfer or incurred the obligation as follows:

29 (1) With actual intent to hinder, delay, or defraud any creditor
30 of the debtor.

31 (2) Without receiving a reasonably equivalent value in exchange
32 for the transfer or obligation, and the debtor either:

33 (A) Was engaged or was about to engage in a business or a
34 transaction for which the remaining assets of the debtor were
35 unreasonably small in relation to the business or transaction.

36 (B) Intended to incur, or believed or reasonably should have
37 believed that the debtor would incur, debts beyond the debtor’s
38 ability to pay as they became due.

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

- (1) Whether the transfer or obligation was to an insider.
- (2) Whether the debtor retained possession or control of the property transferred after the transfer.
- (3) Whether the transfer or obligation was disclosed or concealed.
- (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- (5) Whether the transfer was of substantially all the debtor's assets.
- (6) Whether the debtor absconded.
- (7) Whether the debtor removed or concealed assets.
- (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.
- (11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SEC. 7. Section 3439.05 of the Civil Code is amended to read:

3439.05. (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SEC. 8. Section 3439.06 of the Civil Code is amended to read:

3439.06. For the purposes of this chapter:

1 (a) A transfer is made:

2 (1) With respect to an asset that is real property other than a
3 fixture, but including the interest of a seller or purchaser under a
4 contract for the sale of the asset, when the transfer is so far
5 perfected that a good faith purchaser of the asset from the debtor
6 against which applicable law permits the transfer to be perfected
7 cannot acquire an interest in the asset that is superior to the interest
8 of the transferee; and

9 (2) With respect to an asset that is not real property or that is a
10 fixture, when the transfer is so far perfected that a creditor on a
11 simple contract cannot acquire a judicial lien otherwise than under
12 this chapter that is superior to the interest of the transferee.

13 (b) If applicable law permits the transfer to be perfected as
14 provided in subdivision (a) and the transfer is not so perfected
15 before the commencement of an action for relief under this chapter,
16 the transfer is deemed made immediately before the
17 commencement of the action.

18 (c) If applicable law does not permit the transfer to be perfected
19 as provided in subdivision (a), the transfer is made when it becomes
20 effective between the debtor and the transferee.

21 (d) A transfer is not made until the debtor has acquired rights
22 in the asset transferred.

23 (e) An obligation is incurred:

24 (1) If oral, when it becomes effective between the parties; or

25 (2) If evidenced by a record, when the record signed by the
26 obligor is delivered to or for the benefit of the obligee.

27 SEC. 9. Section 3439.07 of the Civil Code is amended to read:

28 3439.07. (a) In an action for relief against a transfer or
29 obligation under this chapter, a creditor, subject to the limitations
30 in Section 3439.08, may obtain:

31 (1) Avoidance of the transfer or obligation to the extent
32 necessary to satisfy the creditor's claim.

33 (2) An attachment or other provisional remedy against the asset
34 transferred or other property of the transferee in accordance with
35 the procedures described in Title 6.5 (commencing with Section
36 481.010) of Part 2 of the Code of Civil Procedure, or as may
37 otherwise be available under applicable law.

38 (3) Subject to applicable principles of equity and in accordance
39 with applicable rules of civil procedure, the following:

1 (A) An injunction against further disposition by the debtor or
2 a transferee, or both, of the asset transferred or other property of
3 the transferee.

4 (B) Appointment of a receiver to take charge of the asset
5 transferred or other property of the transferee.

6 (C) Any other relief the circumstances may require.

7 (b) If a creditor has commenced an action on a claim against
8 the debtor, the creditor may attach the asset transferred or other
9 property of the transferee if the remedy of attachment is available
10 in the action under applicable law and the property is subject to
11 attachment in the hands of the transferee under applicable law.

12 (c) If a creditor has obtained a judgment on a claim against the
13 debtor, the creditor may levy execution on the asset transferred or
14 its proceeds.

15 (d) A creditor who is an assignee of a general assignment for
16 the benefit of creditors, as defined in Section 493.010 of the Code
17 of Civil Procedure, may exercise any and all of the rights and
18 remedies specified in this section if they are available to any one
19 or more creditors of the assignor who are beneficiaries of the
20 assignment, and, in that event (1) only to the extent the rights or
21 remedies are so available and (2) only for the benefit of those
22 creditors whose rights are asserted by the assignee.

23 SEC. 10. Section 3439.08 of the Civil Code is amended to
24 read:

25 3439.08. (a) A transfer or obligation is not voidable under
26 paragraph (1) of subdivision (a) of Section 3439.04, against a
27 person that took in good faith and for a reasonably equivalent value
28 given the debtor or against any subsequent transferee or obligee.

29 (b) To the extent a transfer is avoidable in an action by a creditor
30 under paragraph (1) of subdivision (a) of Section 3439.07, the
31 following rules apply:

32 (1) Except as otherwise provided in this section, the creditor
33 may recover judgment for the value of the asset transferred, as
34 adjusted under subdivision (c), or the amount necessary to satisfy
35 the creditor's claim, whichever is less. The judgment may be
36 entered against the following:

37 (A) The first transferee of the asset or the person for whose
38 benefit the transfer was made.

39 (B) An immediate or mediate transferee of the first transferee,
40 other than either of the following:

1 (i) A good faith transferee that took for value.

2 (ii) An immediate or mediate good faith transferee of a person
3 described in clause (i).

4 ~~(2) Recovery pursuant to paragraph (1) of subdivision (a) or~~
5 ~~subdivision (b) of Section 3439.07 of or from the asset transferred~~
6 ~~or its proceeds, by levy or otherwise, is available only against a~~
7 ~~person described in subparagraph (A) or (B) of paragraph (1).~~

8 *(2) Recovery pursuant to paragraph (1) of subdivision (a), or*
9 *subdivision (b), or subdivision (c) of Section 3439.07 of or from*
10 *the asset transferred or its proceeds, or other property of the*
11 *transferee, as applicable, by levy or otherwise, is available only*
12 *against a person described in subparagraph (A) or (B) of*
13 *paragraph (1).*

14 (c) If the judgment under subdivision (b) is based upon the value
15 of the asset transferred, the judgment shall be for an amount equal
16 to the value of the asset at the time of the transfer, subject to
17 adjustment as the equities may require.

18 (d) Notwithstanding voidability of a transfer or an obligation
19 under this chapter, a good faith transferee or obligee is entitled, to
20 the extent of the value given the debtor for the transfer or
21 obligation, to the following:

22 (1) A lien on or a right to retain an interest in the asset
23 transferred.

24 (2) Enforcement of an obligation incurred.

25 (3) A reduction in the amount of the liability on the judgment.

26 (e) A transfer is not voidable under paragraph (2) of subdivision
27 (a) of Section 3439.04 or Section 3439.05 if the transfer results
28 from either of the following:

29 (1) Termination of a lease upon default by the debtor when the
30 termination is pursuant to the lease and applicable law.

31 (2) Enforcement of a lien in a noncollusive manner and in
32 compliance with applicable law, including Division 9 (commencing
33 with Section 9101) of the Commercial Code, other than a retention
34 of collateral under Sections 9620 and 9621 of the Commercial
35 Code and other than a voluntary transfer of the collateral by the
36 debtor to the lienor in satisfaction of all or part of the secured
37 obligation.

38 (f) The following rules determine the burden of proving matters
39 referred to in this section:

1 (1) A party that seeks to invoke subdivision (a), (d), or (e) has
2 the burden of proving the applicability of that subdivision.

3 (2) Except as otherwise provided in paragraph (3) or (4), the
4 creditor has the burden of proving each applicable element of
5 subdivision (b) or (c).

6 (3) The transferee has the burden of proving the applicability
7 to the transferee of subparagraph (B) of paragraph (1) of
8 subdivision (b).

9 (4) A party that seeks adjustment under subdivision (c) has the
10 burden of proving the adjustment.

11 (g) The standard of proof required to establish matters referred
12 to in this section is preponderance of the evidence.

13 SEC. 11. Section 3439.09 of the Civil Code is amended to
14 read:

15 3439.09. A cause of action with respect to a transfer or
16 obligation under this chapter is extinguished unless action is
17 brought pursuant to subdivision (a) of Section 3439.07 or levy
18 made as provided in subdivision (b) or (c) of Section 3439.07:

19 (a) Under paragraph (1) of subdivision (a) of Section 3439.04,
20 not later than four years after the transfer was made or the
21 obligation was incurred or, if later, not later than one year after
22 the transfer or obligation was or could reasonably have been
23 discovered by the claimant.

24 (b) Under paragraph (2) of subdivision (a) of Section 3439.04
25 or Section 3439.05, not later than four years after the transfer was
26 made or the obligation was incurred.

27 (c) Notwithstanding any other provision of law, a cause of action
28 under this chapter with respect to a transfer or obligation is
29 extinguished if no action is brought or levy made within seven
30 years after the transfer was made or the obligation was incurred.

31 SEC. 12. Section 3439.10 of the Civil Code is amended and
32 renumbered to read:

33 3439.12. Unless displaced by the provisions of this chapter,
34 the principles of law and equity, including the law merchant and
35 the law relating to principal and agent, estoppel, laches, fraud,
36 misrepresentation, duress, coercion, mistake, insolvency, or other
37 validating or invalidating cause, supplement its provisions.

38 SEC. 13. Section 3439.10 is added to the Civil Code, to read:

39 3439.10. (a) In this section, the following rules determine a
40 debtor's location:

1 (1) A debtor who is an individual is located at the individual's
2 principal residence.

3 (2) A debtor that is an organization and has only one place of
4 business is located at its place of business.

5 (3) A debtor that is an organization and has more than one place
6 of business is located at its chief executive office.

7 (b) A claim in the nature of a claim under this chapter is
8 governed by the local law of the jurisdiction in which the debtor
9 is located when the transfer is made or the obligation is incurred.

10 SEC. 14. Section 3439.11 of the Civil Code is amended and
11 renumbered to read:

12 3439.13. This chapter shall be applied and construed to
13 effectuate its general purpose to make uniform the law with respect
14 to the subject of this chapter among states enacting it.

15 SEC. 15. ~~Section 3439.11 is added to the Civil Code, to read:~~

16 3439.11. ~~(a) For purposes of this section, the following~~
17 ~~definitions apply:~~

18 ~~(1) "Protected series" means an arrangement, however~~
19 ~~denominated, created by a series organization that, pursuant to the~~
20 ~~law under which the series organization is organized, has the~~
21 ~~characteristics set forth in paragraph (2).~~

22 ~~(2) "Series organization" means an organization that, pursuant~~
23 ~~to the law under which it is organized, has the following~~
24 ~~characteristics:~~

25 ~~(A) The organic record of the organization provides for creation~~
26 ~~by the organization of one or more protected series, however~~
27 ~~denominated, with respect to specified property of the organization,~~
28 ~~and for records to be maintained for each protected series that~~
29 ~~identify the property of or associated with the protected series.~~

30 ~~(B) Debt incurred or existing with respect to the activities of,~~
31 ~~or property of, or associated with, a particular protected series is~~
32 ~~enforceable against the property of or associated with the protected~~
33 ~~series only, and not against the property of or associated with the~~
34 ~~organization or other protected series of the organization.~~

35 ~~(C) Debt incurred or existing with respect to the activities or~~
36 ~~property of the organization is enforceable against the property of~~
37 ~~the organization only, and not against the property of or associated~~
38 ~~with a protected series of the organization.~~

39 ~~(b) A series organization and each protected series of the~~
40 ~~organization is a separate person for purposes of this chapter, even~~

1 ~~if for other purposes a protected series is not a person separate~~
2 ~~from the organization or other protected series of the organization.~~

3 ~~SEC. 16.~~

4 *SEC. 15.* Section 3439.12 of the Civil Code is amended and
5 renumbered to read:

6 3439.14. (a) The changes to this chapter made by the act
7 adding this subdivision apply only to a right of action that accrued,
8 transfer made, or obligation incurred, on or after the effective date
9 of that act.

10 (b) This chapter, and the other changes in the law made by
11 Chapter 383 of the Statutes of 1986, apply only to transfers made
12 or obligations incurred before the effective date of the act that
13 added subdivision (a) and on or after January 1, 1987. As to
14 transfers made or obligations incurred prior to January 1, 1987,
15 the law in effect at the time the transfer was made or the obligation
16 was incurred shall apply.

17 (c) Section 3439.06 shall determine the date that a transfer was
18 made or obligation incurred.

19 (d) The provisions of this chapter, insofar as they are
20 substantially the same as the provisions of this chapter in effect
21 ~~on the effective date as the act adding subdivision (a),~~ *December*
22 *31, 2015*, shall be construed as restatements and continuations,
23 and not as new enactments.

24 ~~SEC. 17.~~

25 *SEC. 16.* The heading of Chapter 3 (commencing with Section
26 3445) of Title 2 of Part 2 of Division 4 of the Civil Code is
27 amended to read:

28
29 CHAPTER 3. UNDERTAKING IN VOIDABLE TRANSFER ACTION
30

31 ~~SEC. 18.~~

32 *SEC. 17.* Section 3446 of the Civil Code is amended to read:

33 3446. (a) In an action by a creditor for relief against a transfer
34 or obligation under Chapter 1 (commencing with Section 3439)
35 of Title 2 of Part 2 of Division 4 on the ground that the transfer or
36 obligation is voidable as to the creditor, the transferee may give
37 an undertaking as provided in this chapter.

38 (b) If an undertaking is given as provided in this chapter, the
39 transferee may sell, encumber, transfer, convey, mortgage, pledge,
40 or otherwise dispose of the property or obligation, or a part thereof,

1 and the purchaser, encumbrancer, transferee, mortgagee, grantee,
2 or pledgee of the property or obligation takes, owns, holds, and
3 possesses the property or obligation unaffected by the action and
4 any judgment that is rendered in the action.

5 ~~SEC. 19.~~

6 *SEC. 18.* Section 3447 of the Civil Code is amended to read:

7 3447. The undertaking shall be conditioned that, if it is
8 determined in the action that the transfer or obligation was voidable
9 as to the creditor, the transferee will pay to the creditor the lesser
10 of the following amounts:

11 (a) The value of the property or obligation as estimated in the
12 undertaking.

13 (b) The amount determined in the action to be due and owing
14 to the creditor by the person who transferred the property or
15 incurred the obligation.

16 ~~SEC. 20.~~

17 *SEC. 19.* Section 5420 of the Corporations Code is amended
18 to read:

19 5420. (a) Any person who receives any distribution is liable
20 to the corporation for the amount so received by such person with
21 interest thereon at the legal rate on judgments until paid.

22 (b) Suit may be brought in the name of a corporation by a
23 creditor, a director, the Attorney General, or, subject to meeting
24 the requirements of Section 5710, a member. In any such action
25 in addition to the remedy provided in subdivision (a), the court
26 may award punitive damages for the benefit of the corporation
27 against any director, officer, member or other person who with
28 intent to defraud the corporation caused, received or aided and
29 abetted in the making of any distribution.

30 (c) Any person sued under this section may implead all other
31 persons liable under this section and may in the absence of fraud
32 by a moving party compel contribution, either in that action or in
33 an independent action against persons not joined in the action.

34 (d) This section shall not affect any liability which any person
35 may have under the Uniform Voidable Transactions Act (Chapter
36 1 (commencing with Section 3439) of Title 2 of Part 2 of Division
37 4 of the Civil Code).

38 ~~SEC. 21.~~

39 *SEC. 20.* Section 7420 of the Corporations Code is amended
40 to read:

1 7420. (a) Any person who with knowledge of facts indicating
2 the impropriety thereof receives any distribution, including a
3 payment in redemption of a membership, prohibited by this chapter
4 is liable to the corporation for the amount so received by the person
5 with interest thereon at the legal rate on judgments until paid.

6 (b) Any person who with knowledge of facts indicating the
7 impropriety thereof receives any distribution, including a payment
8 in redemption of a membership, prohibited by this chapter is liable
9 to the corporation for the benefit of the head organization, or of
10 all of the creditors entitled to institute an action under subdivision

11 (c), for the amount so received by the person with interest thereon
12 at the legal rate on judgments until paid, but not exceeding the
13 obligations of the corporation owed to the head organization at the
14 time of the violation, or the liabilities of the corporation owed to
15 nonconsenting creditors at the time of the violation, as the case
16 may be.

17 (c) Suit may be brought in the name of the corporation to enforce
18 the liability (1) to creditors arising under subdivision (b) for a
19 violation of Section 7411 or 7412 against any or all persons liable
20 by any one or more creditors of the corporation whose debts or
21 claims arose prior to the time of the distribution and who have not
22 consented thereto, whether or not they have reduced their claims
23 to judgment, or (2) to the head organization arising under
24 subdivision (b) for a violation of Section 7413 against any or all
25 persons liable by any head organization which pursuant to the
26 corporation's articles is entitled to a distribution of assets upon
27 dissolution.

28 (d) Any person sued under subdivision (b) may implead all other
29 persons liable under subdivision (b) and may in the absence of
30 fraud by the moving party compel contribution, either in that action
31 or in an independent action against persons not joined in that action.

32 (e) Nothing contained in this section affects any liability which
33 any person may have under the Uniform Voidable Transactions
34 Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part
35 2 of Division 4 of the Civil Code).

36 ~~SEC. 22.~~

37 SEC. 21. Section 15905.02 of the Corporations Code is
38 amended to read:

39 15905.02. (a) A partner's obligation to contribute money or
40 other property or other benefit to, or to perform services for, a

1 limited partnership is not excused by the partner's death, disability,
2 or other inability to perform personally.

3 (b) If a partner does not make a promised nonmonetary
4 contribution, the partner is obligated at the option of the limited
5 partnership to contribute money equal to the value of that portion,
6 as stated in the required information, of the stated contribution
7 which has not been made.

8 (c) The obligation of a partner to make a contribution or return
9 money or other property paid or distributed in violation of this
10 chapter may be compromised only by consent of all partners. A
11 creditor of a limited partnership which extends credit or otherwise
12 acts in reliance on an obligation described in subdivision (a),
13 without notice of any compromise under this subdivision, may
14 enforce the original obligation.

15 (d) A partnership agreement may provide that the interest of a
16 partner who fails to make any contribution or other payment that
17 the partner is required to make will be subject to specific remedies
18 for, or specific consequences of, the failure. A provision shall be
19 enforceable in accordance with its terms unless the partner seeking
20 to invalidate the provision establishes that the provision was
21 unreasonable under the circumstances existing at the time the
22 agreement was made. The specific remedies or consequences may
23 include loss of voting, approval, or other rights, loss of the partner's
24 ability to actively participate in the management and operations
25 of the partnership, liquidated damages, or a reduction of the
26 defaulting partner's economic rights. The reduction of the
27 defaulting partner's economic rights may include one or more of
28 the following provisions:

29 (1) Diluting, reducing or eliminating the defaulting partner's
30 proportionate interest in the partnership.

31 (2) Subordinating the defaulting partner's interest in the
32 partnership to that of nondefaulting partners.

33 (3) Permitting a forced sale of the partnership interest.

34 (4) Permitting the lending or contribution by other partners of
35 the amount necessary to meet the defaulting partner's commitment.

36 (5) Adjusting the interest rates or other rates of return, preferred,
37 priority, or otherwise, with respect to contributions by or capital
38 accounts of the other partners.

39 (6) Fixing the value of the defaulting partner's interest in the
40 partnership by appraisal, formula and redemption, or sale of the

1 defaulting partner's interest in the partnership at a percentage of
2 that value.

3 (7) Nothing in this section shall be construed to affect the rights
4 of third-party creditors of the partnership to seek equitable remedies
5 nor any rights existing under the Uniform Voidable Transactions
6 Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part
7 2 of Division 4 of the Civil Code).

8 ~~SEC. 23.~~

9 *SEC. 22.* Section 15911.27 of the Corporations Code is
10 amended to read:

11 15911.27. To the extent that the payment to dissenting limited
12 partners of the fair market value of their dissenting interests would
13 require the dissenting limited partners to return such payment or
14 a portion thereof by reason of Section 15905.09 or the Uniform
15 Voidable Transactions Act (Chapter 1 (commencing with Section
16 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then
17 that payment or portion thereof shall not be made and the dissenting
18 limited partners shall become creditors of the limited partnership
19 for the amount not paid, together with interest thereon at the legal
20 rate on judgments until the date of payment, but subordinate to all
21 other creditors in any proceeding relating to the winding up and
22 dissolution of the limited partnership, such debt to be payable when
23 permissible.

24 ~~SEC. 24.~~

25 *SEC. 23.* Section 17704.03 of the Corporations Code is
26 amended to read:

27 17704.03. (a) A person's obligation to make a contribution to
28 a limited liability company is not excused by the person's death,
29 disability, or other inability to perform personally. If a person does
30 not make a required contribution, the person or the person's estate
31 is obligated to contribute money equal to the value of the part of
32 the contribution that has not been made, at the option of the limited
33 liability company.

34 (b) The obligation of a member to make a contribution to a
35 limited liability company may be compromised only by consent
36 of all the members. A conditional obligation of a member to make
37 a contribution to a limited liability company shall not be enforced
38 unless the conditions of the obligation have been satisfied or
39 waived as to or by that member. Conditional obligations include

1 contributions payable upon a discretionary call of a limited liability
2 company before the time the call occurs.

3 (c) A creditor of a limited liability company that extends credit
4 or otherwise acts in reliance on an obligation described in
5 subdivision (a) may enforce the obligation.

6 (d) Nothing in this section shall be construed to affect the rights
7 of third-party creditors of the limited liability company to seek
8 equitable remedies or any rights existing under the Uniform
9 Voidable Transactions Act (Chapter 1 (commencing with Section
10 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

11 ~~SEC. 25.~~

12 *SEC. 24.* Section 17711.08 of the Corporations Code is
13 amended to read:

14 17711.08. To the extent that the payment to dissenting members
15 of the fair market value of their dissenting interests would require
16 the dissenting members to return payment or a portion of the
17 payment by reason of Section 17711.09 or the Uniform Voidable
18 Transactions Act (Chapter 1 (commencing with Section 3439) of
19 Title 2 of Part 2 of Division 4 of the Civil Code), then that payment
20 or portion thereof shall not be made and the dissenting members
21 shall become creditors of the limited liability company for the
22 amount not paid, together with interest thereon at the legal rate on
23 judgments until the date of payment, but subordinate to all other
24 creditors in any proceeding relating to the winding up and
25 dissolution of the limited liability company, such debt to be payable
26 when permissible.

27 ~~SEC. 26.~~

28 *SEC. 25.* Section 18640 of the Corporations Code is amended
29 to read:

30 18640. Nothing in this chapter limits application of the Uniform
31 Voidable Transactions Act (Chapter 1 (commencing with Section
32 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

33 ~~SEC. 27.~~

34 *SEC. 26.* Section 283 of the Probate Code is amended to read:

35 283. A disclaimer is not a voidable transfer by the beneficiary
36 under the Uniform Voidable Transactions Act (Chapter 1
37 (commencing with Section 3439) of Title 2 of Part 2 of Division
38 4 of the Civil Code).

39 ~~SEC. 28.~~

40 *SEC. 27.* Section 9653 of the Probate Code is amended to read:

1 9653. (a) On application of a creditor of the decedent or the
2 estate, the personal representative shall commence and prosecute
3 an action for the recovery of real or personal property of the
4 decedent for the benefit of creditors if the personal representative
5 has insufficient assets to pay creditors and the decedent during
6 lifetime did any of the following with respect to the property:

7 (1) Made a conveyance of the property, or any right or interest
8 in the property, that is voidable as to creditors under the Uniform
9 Voidable Transactions Act (Chapter 1 (commencing with Section
10 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

11 (2) Made a gift of the property in view of impending death.

12 (3) Made a direction to transfer a vehicle, undocumented vessel,
13 manufactured home, mobilehome, commercial coach, truck camper,
14 or floating home to a designated beneficiary on the decedent's
15 death pursuant to Section 18102.2 of the Health and Safety Code,
16 or Section 5910.5 or 9916.5 of the Vehicle Code, and the property
17 has been transferred as directed.

18 (b) A creditor making application under this section shall pay
19 such part of the costs and expenses of the suit and attorney's fees,
20 or give an undertaking to the personal representative for that
21 purpose, as the personal representative and the creditor agree, or,
22 absent an agreement, as the court or judge orders.

23 (c) The property recovered under this section shall be sold for
24 the payment of debts in the same manner as if the decedent had
25 died seized or possessed of the property. The proceeds of the sale
26 shall be applied first to payment of the costs and expenses of suit,
27 including attorney's fees, and then to payment of the debts of the
28 decedent in the same manner as other property in possession of
29 the personal representative. After all the debts of the decedent have
30 been paid, the remainder of the proceeds shall be paid to the person
31 from whom the property was recovered. The property may be sold
32 in its entirety or in such portion as necessary to pay the debts.

33 ~~SEC. 29.~~

34 *SEC. 28.* Section 2104 of the Public Utilities Code is amended
35 to read:

36 2104. (a) Except as provided by Sections 2100 and 2107.5,
37 actions to recover penalties under this part shall be brought in the
38 name of the people of the State of California, in the superior court
39 in and for the county, or city and county, in which the cause or
40 some part thereof arose, or in which the corporation complained

1 of has its principal place of business, or in which the person
2 complained of resides. The action shall be commenced and
3 prosecuted to final judgment by the attorney or agent of the
4 commission. All fines and penalties may be sued for and recovered.
5 The commission may enjoin the sale of a public utility's or
6 common carrier's assets to satisfy unpaid fines and penalties. The
7 commission may use any of the remedies afforded to a creditor
8 under the Uniform Voidable Transactions Act (Chapter 1
9 (commencing with Section 3439) of Title 2 of Part 2 of Division
10 4 of the Civil Code). Respondents who fraudulently transfer assets
11 to avoid paying commission-imposed fines or penalties are subject
12 to prosecution under Sections 154, 531, and 531a of the Penal
13 Code. In all of these actions, the procedure and rules of evidence
14 shall be the same as in ordinary civil actions, except for
15 prosecutions under the Penal Code or as otherwise herein provided.
16 All fines and penalties recovered by the state in any action, together
17 with the costs thereof, shall be paid into the State Treasury to the
18 credit of the General Fund. Any action may be compromised or
19 discontinued on application of the commission upon the terms the
20 court approves and orders.

21 (b) This section shall become operative on January 1, 2014.